

After Recording Return To:

Prepared By
Stephen F. Treadgold, Esq.
Hooper, Lundy & Bookman, P.C.
101 West Broadway, Suite 1200
San Diego, California 92101

NA

12/08/11 3:25:00
DK W BK 671 PG 84
DESDO COUNTY, MS
W.E. DAVIS, CH CLERK

(Space Above For Recorder's Use)

TENANTS IN COMMON AGREEMENT

November 14, 2011 This Tenants in Common Agreement (this "Agreement") is made and effective as of *November 14, 2011*, 2011, by and between BONNIE L. DAMRON, TRUSTEE OF THE SURVIVOR'S TRUST UNDER THE DAMRON FAMILY TRUST (the "Survivor's Trust"), and BONNIE L. DAMRON, TRUSTEE OF THE NON-EGST-QTIP TRUST UNDER THE DAMRON FAMILY TRUST (the "Non-EGST-QTIP Trust"), each having an address and percentage interest as listed on Exhibit A attached hereto and incorporated herein, with reference to the facts set forth below. The Survivor's Trust and the Non-EGST-QTIP Trust, together with their respective successors and assigns, are each sometimes referred to as a "Tenant in Common," a "Co-Tenant" or a "Party," or collectively as the "Tenants in Common," the "Co-Tenants" or the "Parties."

RECITALS

A. The Tenants in Common own that certain commercial real property commonly known as 6915 Windchase Drive, Lake Horn, Mississippi, as more particularly described in Exhibit B attached hereto and incorporated herein (together with the improvements, alterations, structures and additions now or hereafter located thereon, the "Property").

B. The Tenants in Common desire to enter into this Agreement to provide for the orderly administration of the Property and to delegate authority and responsibility for the operation and management of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Nature of Relationship Between Co-Tenants.

1.1 Tenants in Common Relationship; No Partnership. The Tenants in Common shall each hold their respective undivided tenancy in common interests in the Property (the

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"Interests") as tenants in common. The Tenants in Common do not intend by this Agreement to create a partnership or joint venture between themselves, but merely to set forth the terms and conditions upon which each of them shall hold their respective Interests.

1.2 No Agency. Except as otherwise provided herein, neither Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind, the other Tenant in Common, or to incur any obligations with respect to the Property.

2. Management.

2.1 Appointment; Authority. The Tenants in Common hereby authorize and appoint the Survivor's Trust as the managing tenant in common (the "Managing TIC"). The Managing TIC, subject to the terms and provisions hereof, shall be the sole and exclusive manager of the Property to act on behalf of the Tenants in Common with respect to the management, operation, financing, leasing, repair and maintenance of the Property. Notwithstanding the foregoing, the following actions shall require the unanimous consent of the Tenants in Common.

- (a) selling of the Property or any portion thereof;
- (b) borrowing any funds to be secured by the Property;
- (c) amending any loan documents in connection with any financing secured by the Property;
- (d) making any non-proportional distribution to the Tenants in Common other than as expressly provided herein; and
- (e) executing any document binding upon the Tenants in Common for the encumbrance of the Property.

2.2 Bank Accounts, Etc. The Managing TIC shall maintain one (1) or more accounts in a federally insured financial institution as the agent of and signatory for the Tenants in Common, which accounts shall be maintained for the collection, retention and disposition of funds in connection with the operation and ownership of the Property. Funds held by the Managing TIC in connection with the Property shall be applied: (a) first, to the payment of any principal, interest and other amounts due under any debt secured by the Property; (b) second, to the payment of operating expenses of the Property; (c) third, to maintain adequate working capital; and (d) fourth, to the Tenants in Common in proportion to their Interests.

3. Income and Liabilities. Except as otherwise provided herein, each of the Tenants in Common shall be entitled to all benefits and obligations of ownership of the Property. Accordingly, each of the Tenants in Common shall (a) subject to the terms and conditions of any loan documents executed in connection with any financing secured by the Property, be entitled to all items of rental and other revenue and all proceeds from any sale, refinance, condemnation or insurance covering the Property, in each case in proportion to their respective Interests, and (b) bear and be liable for the payment of all expenses of ownership of the Property.

4. Co-Tenant's Obligations. The Tenants in Common each agree to perform such acts as may be reasonably necessary to carry out the terms and conditions of this Agreement, including:

4.1 Documents. Executing documents required in connection with any sale or refinancing of the Property in accordance with Section 5 below and such additional documents as may be required under this Agreement or as may be reasonably required with respect to any such sale or refinancing or otherwise to carry out the intent of this Agreement.

4.2 Additional Funds. Each Tenant in Common will be responsible for its pro rata share, based on its respective Interest, of any future cash needed in connection with the ownership, operation and maintenance of the Property in proportion to its respective Interest. To the extent a Tenant in Common fails to pay any funds pursuant to this Section within fifteen (15) days after they become due, the other Tenant in Common may pay such amount, and the nonpaying Tenant in Common shall reimburse the paying Tenant in Common upon demand.

4.3 Limitation on Liability. Notwithstanding any other provisions of this Agreement to the contrary, (a) the liability of each Tenant in Common under this Agreement shall be limited to such Tenant in Common's Interest, and (b) no trustee or beneficiary of either Tenant in Common shall have any liability hereunder whatsoever.

5. Distribution of Loan or Sale Proceeds. Notwithstanding any other provisions of this Agreement but subject to the terms and provisions of any loan documents executed in connection with any financing secured by the Property, the proceeds of a loan or sale shall be applied at the closing of the loan or the sale in the following order:

- (a) to repay any then-existing loan secured by the Property in full;
- (b) to refund any disproportionate funding made by any Tenant in Common in accordance with Section 4.2 hereof;
- (c) to pay all outstanding costs and expenses incurred in connection with the marketing and sale of the Property;
- (d) to pay all outstanding fees and costs as set forth in any property management agreement with respect to the Property;
- (e) to pay the Tenants in Common in proportion to their respective Interests.

6. Waiver of Right to Possession. The Tenants in Common intend to lease the Property to third parties at all times. Accordingly, neither Tenant in Common shall have the right to occupy or use the Property, or any portion thereof, at any time during the existence of this Agreement.

7. Transfer or Encumbrance. Neither Tenant in Common may sell, transfer, convey, pledge, encumber or hypothecate its Interest or any part thereof except in connection with the sale or financing of the entire Property, and then only (a) in accordance with the terms and provisions of this

Agreement, (b) in accordance with applicable law and (c) to the extent permitted by the terms and provisions of any loan documents executed in connection with any financing secured by the Property.

8. No Right of Partition. The Tenants in Common agree that neither Tenant in Common shall have the right to file a complaint or institute any action or other proceeding at law or in equity to have the Property partitioned in kind or sold in lieu thereof, and each Tenant in Common hereby waives any rights that it might otherwise have at law or in equity to institute any such action or other proceeding. The obligations of each Tenant in Common hereunder are independent of each and every obligation of the other Tenant in Common hereunder or otherwise, and in no event shall the obligations of either of the Tenants in Common under this Section 8 be conditioned upon the performance of any obligation of the other Tenant in Common hereunder.

9. Property Management. Isola & Associates, Inc., an independent property manager, shall be engaged to perform property management services for the Property, as deemed appropriate or desirable by the Managing TIC. Such services shall be undertaken on terms and conditions customarily found in similar service agreements.

10. General Provisions.

10.1 Mutuality; Reciprocity; Runs With the Land. Subject to Section 10.11 hereof, all provisions, conditions, covenants, restrictions, obligations and agreements contained herein: (a) are made for the direct, mutual and reciprocal benefit of each and every part of the Property; (b) shall be binding upon and shall inure to the benefit of each of the Tenants in Common (as defined as of the date hereof), their respective successors and assigns and any other person or entity acquiring an undivided interest in the Property or any portion thereof, whether by operation of law or otherwise (each a "Successor," and collectively, "Successors"); (c) shall create mutual equitable servitudes and burdens upon the undivided interest in the Property of each Tenant in Common in favor of the interest of the other Tenant in Common; and (d) shall create reciprocal rights and obligations between the Tenants in Common and their respective Successors as covenants running with the land that comprises the Property for the benefit of the other Tenant in Common pursuant to applicable law. Subject to Section 10.11 hereof, it is expressly agreed that each covenant contained herein: (i) is for the benefit of and is a burden upon the undivided interests in the Property of each of the Tenants in Common, (ii) runs with the undivided interest in the Property of each Tenant in Common and (iii) benefits and is binding upon each Successor during its ownership of any undivided interest in the Property and each owner having any interest therein derived in any manner through any Tenant in Common or Successor. Subject to Section 10.11 hereof, the Tenants in Common agree that, subject to the restrictions on transfer contained herein, any Successor shall become a party to this Agreement upon its acquisition of an undivided interest in the Property as if such person were a Tenant in Common (as defined as of the date hereof).

10.2 Attorneys' Fees. If any action or proceeding is instituted between the Tenants in Common arising from or related to or with this Agreement, the Tenant in Common prevailing in such action or arbitration shall be entitled to recover from the other Tenant in Common all of its costs of such action or proceeding, including reasonable attorneys' fees and expenses.

10.3 Entire Agreement. This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties, oral or written, are hereby superseded and merged herein.

10.4 Governing Law. This Agreement shall be governed by and construed under the internal laws of the State of where the Property is located without regard to conflicts or choice of law rules.

10.5 Modifications. No modification, amendment, or change of this Agreement shall be valid unless the same is in writing and signed by both of the Parties and, if undertaken at any time when there exists any outstanding financing secured by the Property, consented to by the holder of any loan documents constituting a lien on the Property. No waiver or discharge of any obligation or liability under this Agreement shall be valid unless the same is in writing and signed by the Party against which the enforcement of such waiver or discharge is or may be sought. Either Tenant in Common may specifically waive any breach of this Agreement by the other Tenant in Common, but no such waiver shall constitute a continuing waiver of similar or other breaches.

10.6 Notice and Payments. Any notice to be given or other document or payment to be delivered by either Party to the other Party hereunder may be delivered in person, or may be deposited in the United States mail duly certified or registered, return receipt requested, with postage prepaid, or by FedEx or other similar overnight delivery service, and addressed to the Tenants in Common at the addresses specified in Exhibit A hereto. Either Party may, from time to time by written notice to the other Party in accordance herewith, designate a different address which shall be substituted for the one previously specified. Unless otherwise specifically provided for herein, all notices, payments, demands or other communications given to either Party hereunder shall be in writing and shall be deemed to have been duly given and received upon such Party's actual receipt or refusal of such delivery.

10.7 Term. This Agreement shall commence as of the date first written above. This Agreement may be recorded among the land records of the county where the Property is located. This Agreement shall terminate upon a written termination of this Agreement executed by all of the Tenants in Common (as defined at the time of such termination) and consented to by the holder of any financing secured by the Property. If this Agreement has been recorded, the termination of this Agreement shall be recorded in the land records of the county where the Property is located.

10.8 Severability. If any portion of this Agreement shall become illegal or invalid for any reason or shall be held by any court of competent jurisdiction to be illegal or invalid, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permissible by law.

10.9 Construction of Terms. The term "or" shall not be exclusive. The terms "herein," "hereof," "hereto," "hereunder" and other terms similar to such terms shall refer to this Agreement as a whole and not merely to the specific article, section, paragraph or clause where such terms may appear. The term "including" shall mean "including, but not limited to."

10.10 Time is of the Essence. Time is of the essence of each and every provision of this Agreement.

10.11 Subordination. Notwithstanding anything set forth herein to the contrary, this Agreement is subject and subordinate to the terms, provisions and lien of any loan documents executed in connection with any financing now or hereafter secured by the Property.

10.12 Notice. Each Tenant in Common hereby authorizes the Managing TIC to be the only Party to which the holder of any loan documents executed in connection with any financing secured by the Property is required to provide written notice or other communication pursuant to such loan documents. Any such notice shall be valid and effective as though given to all Tenants in Common. The Managing TIC hereby agrees to forward any such notice from such holder to the other Tenant in Common, but any failure of the Managing TIC to do so will not constitute the failure of such holder to provide such notice to all Tenants in Common under such loan documents.

10.13 Counterparts. This Agreement may be executed in counterparts, each of which, taken together, shall be deemed one fully executed original.

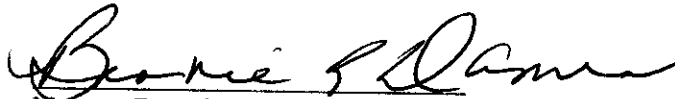
10.14 Exhibits. The following exhibits are attached hereto and made a part hereof:

Exhibit A	Tenants in Common, Addresses, and Interests
Exhibit B	Description of the Property


[signatures on next page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth above.

SURVIVOR'S TRUST UNDER THE DAMRON FAMILY TRUST

By: 
Name: Bonnie L. Damron
Title: Trustee

NON-EGST-QTIP TRUST UNDER THE DAMRON FAMILY TRUST

By: 
Name: Bonnie L. Damron
Title: Trustee

STATE OF CALIFORNIA)
) ss.
 COUNTY OF SANTA BARBARA)

On NOVEMBER 14, 2011 ~~2011~~, before me, ELLIOTT RODRIGUEZ, a Notary Public, personally appeared Bonnie L. Damron, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

(Seal)

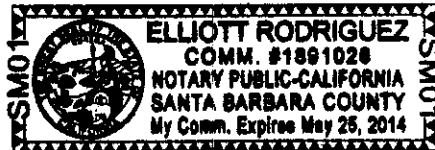


EXHIBIT A

Tenants in Common, Address, and Interest

<u>Tenants in Common/Address</u>	<u>Interest</u>
SURVIVOR'S TRUST UNDER THE DAMRON FAMILY TRUST 1076 Fairway Road Montecito, CA 93108	50%
NON-EGST-QTIP TRUST UNDER THE DAMRON FAMILY TRUST 1076 Fairway Road Montecito, CA 93108	50%

EXHIBIT B

Legal Description of the Property

The land lying and being situated in DeSoto County, Mississippi, more particularly described as follows, to-wit:

Lot 4, Second Revision, Windchase Subdivision, situated in Section 35, Township 1 South, Range 8 West, City of Horn Lake, DeSoto County, Mississippi, as per plat recorded in Plat Book 85, page 3, in the office of the Chancery Clerk of DeSoto County, Mississippi.

Together with easements created under Declaration of Easements recorded in Deed Book 461, page 582, in the office of the Chancery Clerk of Desoto County, Mississippi.